

**Title 8, California Code of Regulations
Division 1. Department of Industrial Relations
Chapter 6. Division of Labor Standards Enforcement
Subchapter 12. Travel Expense Reimbursements
Sections 13700 through 13706**

INITIAL STATEMENT OF REASONS

SPECIFIC PURPOSE OF THE REGULATION

The purpose of these regulations is to implement, interpret, and make specific Labor Code Section 2802 by explaining the requirements for and providing a method by which employers may reimburse employees for travel expenses necessarily incurred in connection with the use of personally provided vehicles for work, overnight travel for work, and per diem expenses.

NECESSITY

Labor Code Section 2802 was enacted in 1937 when the Labor Code was first codified. It provides that employers must “indemnify” their employees for all expenditures necessarily incurred in the discharge of the employees’ duties for the employer. Labor Code Section 2804 declares that any contract or agreement to waive the benefits of Section 2802 is void. The DLSE has had a long standing enforcement position regarding the requirement that employers reimburse employees for all mileage expenses pursuant to the requirements of Section 2802. The DLSE’s enforcement position is currently only embodied in opinion letters. Notwithstanding the age of this statute, there is a dearth of case law regarding how employers must comply with this statute, what must be reimbursed to employees by employers, at what rate employees must have their travel and mileage expenses reimbursed, and whether additional compensation will satisfy the reimbursement requirements of Section 2802. This lack of any more developed authority and guidance has led to confusion in the employer community, and some anomalous results where employers may believe that part of a wage package paid to employees can serve to “indemnify” their employees for work related expenses. While the DLSE has express statutory authority to investigate and adjudicate claims for employee expenses, there is nothing express in the recordkeeping statutes that spell out an employer’s obligations to collect, keep and maintain records to justify the reimbursement for business related expenses paid to workers.

With respect to indemnification of per diem expenses for overnight travel away from home, there are no cases or opinion letters addressing or explaining the manner in which an employer can comply with the requirements of Section 2802. As with reimbursement for mileage, there is also a need to spell out the recordkeeping requirements so that the DLSE can enforce the requirements of Section 2802 in the context of per diem reimbursements.

These Travel Expense regulations are necessary to: 1) explain the requirements and specify the methods by which employers may reimburse employees for travel expenses

necessarily incurred in connection with the use of personal vehicles for work and overnight travel for work under Labor Code Section 2802; 2) define certain key terms to ensure that the content and meaning of the regulations are clearly understood by the regulated community; 3) clearly apprise employers and employees of what records must be kept and made readily available to the Labor Commissioner for inspection and copying so that the state's wage and hour laws can efficiently and effectively be enforced; 4) inform employers of the potential consequences they may face for failing to provide the records or for providing falsified records; 5) ensure that the Legislature's intent that employees be indemnified for all necessary expenditures or losses incurred in direct consequence of the discharge of their duties is carried out; and 6) establish the procedures for recovering unpaid travel reimbursement moneys and attorneys fees under Labor Code Section 2802(b) and (c).

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

DLSE relied upon the following documents in preparing this regulatory action:

- (1) Tidewater Marine Western, Inc. v. Victoria L. Bradshaw (14 Cal. 4th 557);
- (2) Internal Revenue Service Publication 463 Entertainment, Gift, and Car Expense;
- (3) Internal Revenue Service Publication 1542 Per Diem Rates;
- (4) DLSE Opinion Letter 1994.08.14
- (5) DLSE Opinion Letter 1998.11.05

REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES.

The Labor Commissioner considered additionally authorizing employers to indemnify employees' travel expenses by paying higher base salaries and/or commission rates as a matter of contract. The Labor Commissioner rejected this option, however, because it is impossible to determine whether indemnification in the form of additional compensation would truly indemnify the employee for all necessary expenditures or losses. These regulations carry out the intent of the Legislature's enactment of Labor Code Section 2802, which requires employers to indemnify employees for all necessary expenditures or losses incurred in direct consequence of the discharge of their duties, by giving employers and employees two options: (1) reimbursement for documented actual expenses; or (2) reimbursement using the IRS rates for mileage and per diem expenses as published annually in Internal Revenue Service Publications 463 and 1542.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS.

The Labor Commissioner has not identified any alternatives that would lessen any adverse impact on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS.

The proposed regulatory action does not impose any additional expenses on businesses. Existing law (Labor Code Section 2802) requires employers to indemnify employees for all necessary expenditures or losses incurred in direct consequences of the discharge of their duties. These regulations merely do the following: 1) explain the requirements and specify the methods by which employers may reimburse employees for travel expenses; 2) define certain key terms to ensure that the content and meaning of the regulations are clearly understood by the regulated community; 3) apprise employers and employees of what records must be kept and made readily available to the Labor Commissioner for inspection and copying; 4) inform employers of the potential consequences they may face for failing to provide the records or for providing falsified records; 5) ensure that the Legislature's intent that employees be indemnified for all necessary expenditures or losses incurred in direct consequence of the discharge of their duties is carried out; and 6) establish the procedures for recovering unpaid travel reimbursement moneys and attorneys fees under Labor Code Section 2802(b) and (c).

Thus, it can be said that rather than these regulations having an adverse economic impact on any business, they will have the opposite effect. The uncertainty that businesses must confront when determining how/whether to reimburse employees for travel expenses, including the cost of seeking legal or other professional advice to determine compliance with Section 2802, will be replaced with a simple, understandable set of rules that employers can follow.